IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 432 of 2007()

LPC.46/2005 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

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PETITIONER/A1:

SUJITH N.M., S/O.CHANDRASEKHARAN
AGED 37 YEARS, CHENGUTTI HOUSE
PUTHUVAYAL P.O., KALPETTA.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENT/STATE:

STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 432 of 2007

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Dated this the 20th day of February, 2007

O R D E R

The petitioner is the first accused in a prosecution, inter alia, for the offences punishable under Sections 308 and 395 r/w. 149 I.P.C. The petitioner was not available for trial. The case against him has been split up. The same is pending before the learned Magistrate as C.P.31 of 2005. The co-accused have already been committed to the Court of Sessions and the case against them is pending as S.C. 188 of 2005. That case stands included in the list for trial on 2.3.2007.

2. The petitioner did not appear before the learned Magistrate. Consequently the case against him has been transferred to the list of long pending cases. The petitioner is now available and wants to surrender before the learned Magistrate. He apprehends that when he surrenders and applies for bail, his application will not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail

when he surrenders and applies for bail and also to expeditiously commit the case so that the petitioner can make a request that the trial against him may also be taken up along with the co-accused on 2.3.2007 as already listed.

3. I find merit in the prayer that efforts must be made to ensure that two separate trials are avoided and a common trial held against the available accused, including the petitioner. Such course will avoid unnecessary wastage of time, effort and resources of the State.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed, but subject to the observation that if the petitioner appears before the learned Magistrate and

applies for bail, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling and exceptional reasons. In the light of the fact that S.C.No. 188 of 2005 stands listed for trial to 2.3.2007, the learned Magistrate must show the requisite sense of expedition to commit the case against the petitioner also to the Court of Sessions so that the Court of Sessions can make arrangements to get the trial against the petitioner also conducted along with the co-accused from 2.3.2007.

4. Hand over copy of the order to the learned counsel for the petitioner for production before the learned Magistrate. Simultaneously communicate this order to the learned Magistrate and the learned Sessions Judge immediately.

(R. BASANT)
Judge

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